

REFERENCE TITLE: **homeowners' associations; registration; disclosure**

State of Arizona
House of Representatives
Forty-eighth Legislature
Second Regular Session
2008

HB 2131

Introduced by
Representatives Campbell CH: Ableser, Lopes, McGuire, Sinema, Thrasher

AN ACT

AMENDING TITLE 32, CHAPTER 20, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2119; AMENDING SECTIONS 33-1256 AND 33-1807, ARIZONA REVISED STATUTES; RELATING TO CONDOMINIUMS AND PLANNED COMMUNITIES.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 32, chapter 20, article 1, Arizona Revised Statutes,
3 is amended by adding section 32-2119, to read:

4 32-2119. Registration of homeowners' associations

5 A. BEGINNING JANUARY 1, 2009, EACH HOMEOWNERS' ASSOCIATION FOR A
6 CONDOMINIUM THAT IS REGULATED PURSUANT TO TITLE 33, CHAPTER 9 AND EACH
7 HOMEOWNERS' ASSOCIATION FOR A PLANNED COMMUNITY THAT IS REGULATED PURSUANT TO
8 TITLE 33, CHAPTER 16 SHALL REGISTER WITH THE DEPARTMENT AND SHALL PROVIDE TO
9 THE DEPARTMENT THE INFORMATION PRESCRIBED IN SECTION 33-1256, SUBSECTION J IF
10 A HOMEOWNERS' ASSOCIATION FOR A CONDOMINIUM OR SECTION 33-1807, SUBSECTION J
11 IF A HOMEOWNERS' ASSOCIATION FOR A PLANNED COMMUNITY.

12 B. BEGINNING MARCH 1, 2009, THE DEPARTMENT SHALL POST THIS INFORMATION
13 ON THE DEPARTMENT'S WEBSITE IN A FORM THAT MAKES THE INFORMATION AVAILABLE TO
14 THE PUBLIC.

15 C. EACH HOMEOWNERS' ASSOCIATION SHALL SUBMIT TO THE DEPARTMENT ANY
16 REVISED INFORMATION WITHIN NINETY DAYS OF ANY CHANGE TO THE PRESCRIBED
17 INFORMATION.

18 Sec. 2. Section 33-1256, Arizona Revised Statutes, is amended to read:

19 33-1256. Lien for assessments; priority; mechanics' and
20 materialmen's liens; applicability

21 A. The association has a lien on a unit for any assessment levied
22 against that unit from the time the assessment becomes due. The
23 association's lien for assessments, for charges for late payment of those
24 assessments, for reasonable collection fees and for reasonable attorney fees
25 and costs incurred with respect to those assessments may be foreclosed in the
26 same manner as a mortgage on real estate but may be foreclosed only if the
27 owner has been delinquent in the payment of monies secured by the lien,
28 excluding reasonable collection fees, reasonable attorney fees and charges
29 for late payment of and costs incurred with respect to those assessments, for
30 a period of one year or in the amount of one thousand two hundred dollars or
31 more, whichever occurs first. Fees, charges, late charges, monetary
32 penalties and interest charged pursuant to section 33-1242, subsection A,
33 paragraphs 10, 11 and 12, other than charges for late payment of assessments,
34 are not enforceable as assessments under this section. If an assessment is
35 payable in installments, the full amount of the assessment is a lien from the
36 time the first installment of the assessment becomes due. The association
37 has a lien for fees, charges, late charges, other than charges for late
38 payment of assessments, monetary penalties or interest charged pursuant to
39 section 33-1242, subsection A, paragraphs 10, 11 and 12 after the entry of a
40 judgment in a civil suit for those fees, charges, late charges, monetary
41 penalties or interest from a court of competent jurisdiction and the
42 recording of that judgment in the office of the county recorder as otherwise
43 provided by law. The association's lien for monies other than for
44 assessments, for charges for late payment of those assessments, for
45 reasonable collection fees and for reasonable attorney fees and costs

1 incurred with respect to those assessments may not be foreclosed and is
2 effective only on conveyance of any interest in the real property.

3 B. A lien for assessments, for charges for late payment of those
4 assessments, for reasonable collection fees and for reasonable attorney fees
5 and costs incurred with respect to those assessments under this section is
6 prior to all other liens, interests and encumbrances on a unit except:

7 1. Liens and encumbrances recorded before the recordation of the
8 declaration.

9 2. A recorded first mortgage on the unit, a seller's interest in a
10 first contract for sale pursuant to chapter 6, article 3 of this title on the
11 unit recorded prior to the lien arising pursuant to subsection A of this
12 section or a recorded first deed of trust on the unit.

13 3. Liens for real estate taxes and other governmental assessments or
14 charges against the unit.

15 C. Subsection B of this section does not affect the priority of
16 mechanics' or materialmen's liens or the priority of liens for other
17 assessments made by the association. The lien under this section is not
18 subject to chapter 8 of this title.

19 D. Unless the declaration otherwise provides, if two or more
20 associations have liens for assessments created at any time on the same real
21 estate, those liens have equal priority.

22 E. Recording of the declaration constitutes record notice and
23 perfection of the lien for assessments, for charges for late payment of those
24 assessments, for reasonable collection fees and for reasonable attorney fees
25 and costs incurred with respect to those assessments. Further recordation of
26 any claim of lien for assessments under this section is not required.

27 F. A lien for unpaid assessments is extinguished unless proceedings to
28 enforce the lien are instituted within three years after the full amount of
29 the assessments becomes due.

30 G. This section does not prohibit actions to recover sums for which
31 subsection A of this section creates a lien or does not prohibit an
32 association from taking a deed in lieu of foreclosure.

33 H. A judgment or decree in any action brought under this section shall
34 include costs and reasonable attorney fees for the prevailing party.

35 I. The association on written request shall furnish to a lienholder,
36 escrow agent, unit owner or person designated by a unit owner a statement
37 setting forth the amount of unpaid assessments against the unit. The
38 statement shall be furnished within fifteen days after receipt of the request
39 and the statement is binding on the association, the board of directors and
40 every unit owner if the statement is requested by an escrow agency that is
41 licensed pursuant to title 6, chapter 7. Failure to provide the statement to
42 the escrow agent within the time provided for in this subsection shall
43 extinguish any lien for any unpaid assessment then due.

44 J. The association shall record in the office of the county recorder
45 in the county in which the condominium is located a notice stating the name

1 of the association or designated agent or management company for the
2 association, the address for the association and the telephone number of the
3 association or its designated agent or management company. The notice shall
4 include the name of the condominium community, the date of the recording and
5 the recorded instrument number or book and page for the main document that
6 constitutes the declaration. If an association's address, designated agent
7 or management company changes, the association shall amend its notice or
8 record a new notice within ninety days after the change. **BEGINNING JANUARY
9 1, 2009, THE ASSOCIATION SHALL:**

- 10 1. REGISTER WITH THE STATE REAL ESTATE DEPARTMENT PURSUANT TO SECTION
11 32-2119.
- 12 2. PROVIDE THE STATE REAL ESTATE DEPARTMENT WITH THE FOLLOWING
13 INFORMATION:

- 14 (a) ALL OF THE INFORMATION REQUIRED TO BE RECORDED.
- 15 (b) THE NUMBER OF UNITS IN THE CONDOMINIUM.
- 16 (c) THE CROSS STREETS FOR THE LOCATION OF THE CONDOMINIUM.
- 17 (d) THE YEAR THAT THE CONDOMINIUM WAS ESTABLISHED.

18 K. Notwithstanding any provision in the condominium documents or in
19 any contract between the association and a management company, unless the
20 member directs otherwise, all payments received on a member's account shall
21 be applied first to any unpaid assessments, for unpaid charges for late
22 payment of those assessments, for reasonable collection fees and for unpaid
23 attorney fees and costs incurred with respect to those assessments, in that
24 order, with any remaining amounts applied next to other unpaid fees, charges
25 and monetary penalties or interest and late charges on any of those amounts.

26 L. This section does not apply to timeshare plans or associations that
27 are subject to chapter 20 of this title.

28 Sec. 3. Section 33-1807, Arizona Revised Statutes, is amended to read:
29 33-1807. Lien for assessments; priority; mechanics' and
30 materialmen's liens

31 A. The association has a lien on a unit for any assessment levied
32 against that unit from the time the assessment becomes due. The
33 association's lien for assessments, for charges for late payment of those
34 assessments, for reasonable collection fees and for reasonable attorney fees
35 and costs incurred with respect to those assessments may be foreclosed in the
36 same manner as a mortgage on real estate but may be foreclosed only if the
37 owner has been delinquent in the payment of monies secured by the lien,
38 excluding reasonable collection fees, reasonable attorney fees and charges
39 for late payment of and costs incurred with respect to those assessments, for
40 a period of one year or in the amount of one thousand two hundred dollars or
41 more, whichever occurs first. Fees, charges, late charges, monetary
42 penalties and interest charged pursuant to section 33-1803, other than
43 charges for late payment of assessments are not enforceable as assessments
44 under this section. If an assessment is payable in installments, the full
45 amount of the assessment is a lien from the time the first installment of the

1 assessment becomes due. The association has a lien for fees, charges, late
2 charges, other than charges for late payment of assessments, monetary
3 penalties or interest charged pursuant to section 33-1803 after the entry of
4 a judgment in a civil suit for those fees, charges, late charges, monetary
5 penalties or interest from a court of competent jurisdiction and the
6 recording of that judgment in the office of the county recorder as otherwise
7 provided by law. The association's lien for monies other than for
8 assessments, for charges for late payment of those assessments, for
9 reasonable collection fees and for reasonable attorney fees and costs
10 incurred with respect to those assessments may not be foreclosed and is
11 effective only on conveyance of any interest in the real property.

12 B. A lien for assessments, for charges for late payment of those
13 assessments, for reasonable collection fees and for reasonable attorney fees
14 and costs incurred with respect to those assessments under this section is
15 prior to all other liens, interests and encumbrances on a unit except:

16 1. Liens and encumbrances recorded before the recordation of the
17 declaration.

18 2. A recorded first mortgage on the unit, a seller's interest in a
19 first contract for sale pursuant to chapter 6, article 3 of this title on the
20 unit recorded prior to the lien arising pursuant to subsection A of this
21 section or a recorded first deed of trust on the unit.

22 3. Liens for real estate taxes and other governmental assessments or
23 charges against the unit.

24 C. Subsection B of this section does not affect the priority of
25 mechanics' or materialmen's liens or the priority of liens for other
26 assessments made by the association. The lien under this section is not
27 subject to chapter 8 of this title.

28 D. Unless the declaration otherwise provides, if two or more
29 associations have liens for assessments created at any time on the same real
30 estate those liens have equal priority.

31 E. Recording of the declaration constitutes record notice and
32 perfection of the lien for assessments, for charges for late payment of
33 assessments, for reasonable collection fees and for reasonable attorney fees
34 and costs incurred with respect to those assessments. Further recordation of
35 any claim of lien for assessments under this section is not required.

36 F. A lien for an unpaid assessment is extinguished unless proceedings
37 to enforce the lien are instituted within three years after the full amount
38 of the assessment becomes due.

39 G. This section does not prohibit:

40 1. Actions to recover amounts for which subsection A of this section
41 creates a lien.

42 2. An association from taking a deed in lieu of foreclosure.

43 H. A judgment or decree in any action brought under this section shall
44 include costs and reasonable attorney fees for the prevailing party.

1 I. On written request, the association shall furnish to a lienholder,
2 escrow agent, unit owner or person designated by a unit owner a statement
3 setting forth the amount of any unpaid assessment against the unit. The
4 association shall furnish the statement within fifteen days after receipt of
5 the request, and the statement is binding on the association, the board of
6 directors and every unit owner if the statement is requested by an escrow
7 agency that is licensed pursuant to title 6, chapter 7. Failure to provide
8 the statement to the escrow agent within the time provided for in this
9 subsection shall extinguish any lien for any unpaid assessment then due.

10 J. The association shall record in the office of the county recorder
11 in the county in which the planned community is located a notice stating the
12 name of the association or designated agent or management company for the
13 association, the address for the association and the telephone number of the
14 association or its designated agent or management company. The notice shall
15 include the name of the planned community, the date of the recording and the
16 recorded instrument number or book and page for the main document that
17 constitutes the declaration. If an association's address, designated agent
18 or management company changes, the association shall amend its notice or
19 record a new notice within ninety days after the change. **BEGINNING JANUARY**
20 **1, 2009, THE ASSOCIATION SHALL:**

21 1. REGISTER WITH THE STATE REAL ESTATE DEPARTMENT PURSUANT TO SECTION
22 32-2119.

23 2. PROVIDE THE STATE REAL ESTATE DEPARTMENT WITH THE FOLLOWING
24 INFORMATION:

- 25 (a) ALL OF THE INFORMATION REQUIRED TO BE RECORDED.
- 26 (b) THE NUMBER OF UNITS IN THE PLANNED COMMUNITY.
- 27 (c) THE CROSS STREETS FOR THE LOCATION OF THE PLANNED COMMUNITY.
- 28 (d) THE YEAR THAT THE PLANNED COMMUNITY WAS ESTABLISHED.

29 K. Notwithstanding any provision in the community documents or in any
30 contract between the association and a management company, unless the member
31 directs otherwise, all payments received on a member's account shall be
32 applied first to any unpaid assessments, for unpaid charges for late payment
33 of those assessments, for reasonable collection fees and for unpaid attorney
34 fees and costs incurred with respect to those assessments, in that order,
35 with any remaining amounts applied next to other unpaid fees, charges and
36 monetary penalties or interest and late charges on any of those amounts.